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Environmental Health Advocates, Inc.

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.,

14 Plaintiff,

15 v.

16 SEAPOINT FARMS, LLC, a California
17 limited liability company; SMART & FINAL
18 STORES LLC, a California limited liability
19 company; and DOES 1 through 100,
20 inclusive,

21 Defendants.

Case No. 24CV097210

**[PROPOSED] AMENDED CONSENT
JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Seapoint Farms, LLC (“Defendant” or “Seapoint”) with EHA and Seapoint
5 each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 For purposes of this Consent Judgment only, Seapoint is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Seapoint manufactures, imports, sells, and distributes for sale Organic
16 Edamame Pasta (including spaghetti and fettucine) that contains lead. EHA further alleges that
17 Seapoint does so without providing a sufficient health hazard warning as required by Proposition 65
18 and related Regulations. Seapoint denies these allegations and asserts that its products are safe and in
19 compliance with all applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around April 4, 2024, EHA served Defendant Seapoint, Smart & Final Stores LLC, the
22 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
23 of Violation of Proposition 65 (“Notice”). The Notice alleged that Seapoint had violated Proposition
24 65 by failing to sufficiently warn consumers in California of the health hazards associated with
25 exposures to lead contained in edamame spaghetti products, including but not limited to Organic
26 Edamame Spaghetti manufactured or processed by Seapoint that allegedly contain lead and are
27 imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as
28 defined in section 4.1).

1 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
2 violations alleged in the Notice.

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are edamame pasta products, including but not
5 limited to Organic Edamame Spaghetti and Fettucine manufactured or processed by Seapoint that
6 allegedly contain lead and are imported, sold, shipped, delivered, or distributed for sale to consumers
7 in California by Releasees (as defined in section 4.1) (“Covered Products”).

8 **1.7 State of the Pleadings**

9 On or around October 24, 2024, EHA filed a Complaint against Seapoint for the alleged
10 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

11 **1.8 No Admission**

12 Seapoint denies the material factual and legal allegations of the Notice and Complaint and
13 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
14 California, including Covered Products, have been, and are, in compliance with all applicable laws,
15 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
16 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
17 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
18 of law. This Section shall not, however, diminish or otherwise affect Seapoint's obligations,
19 responsibilities, and duties under this Consent Judgment.

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
22 Court has jurisdiction over Seapoint as to the allegations in the Complaint, that venue is proper in the
23 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
27 Consent Judgment is approved by the Court, as discussed in Section 5.
28

1 **1.11 Compliance Date**

2 For purposes of this Consent Judgment, the term “Compliance Date” means 90 days from the
3 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed
4 in Section 5.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Reformulation of the Covered Products**

7 Beginning on or before the Compliance Date, Seapoint shall be permanently enjoined from
8 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
9 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of Lead based on a
10 single serving per day unless such Covered Products comply with the warning requirements of Section
11 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving
12 size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2,
13 “distributed for sale in CA” means to directly ship Covered Products into California or to sell Covered
14 Products to a distributor Seapoint knows will sell Covered Products in California.

15 **2.2 Clear and Reasonable Warnings**

16 For Covered Products that contain lead in a concentration exceeding the Reformulation
17 Standard set forth in section 2.1 above, and which are distributed or directly sold by Seapoint in the
18 State of California on or after the Compliance Date, Seapoint shall provide a “clear and reasonable”
19 Proposition 65 warning, within the meaning of Section 2549.6 of the Act, subject to Section 2.3 of this
20 Agreement. Seapoint agrees that each warning shall be prominently placed with such conspicuousness,
21 as compared with words, statements, designs, or devices as to render it likely to be seen, read, and
22 understood by an ordinary individual under customary conditions before purchase or use. Each warning
23 shall be provided in a manner such that the consumer or user understands to which specific Covered
24 Products the warning applies, and which listed chemical(s) is/are implicated, so as to minimize the risk
25 of consumer confusion.

26 For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered
27 Products shall consist of a product-specific warning via one or more of the following methods: (1) A
28 posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product;

1 (2) Any electronic device or process that automatically provides the warning to the purchaser (not
2 applicable to internet purchases, which are subject to the provisions of § 25602(b)); (3) A warning
3 directly affixed to the product’s label or tag; or (4) A short-form warning on the label that complies
4 with the content requirements set forth in §§ 25603(b) and 25603(a). Specifically, pursuant to §
5 25603(a) – (d), one of the following statements must be utilized:

6
7 **1) “WARNING:” [or] “CA WARNING:” [or]**
8 **“CALIFORNIA WARNING:”**: This product can expose
9 you to lead which is known to the State of California to
10 cause cancer and birth defects or other reproductive harm.
11 For more information go to www.P65Warnings.ca.gov/food.

12 **OR**

13 **SHORT FORM**

14 **2) “WARNING:” [or] “CA WARNING:” [or]**
15 **“CALIFORNIA WARNING:”** Risk of cancer and
16 reproductive harm from exposure to lead. See
17 www.P65Warnings.ca.gov/food.

18 **OR**

19 **SHORT FORM**

20 **3) “WARNING:” [or] “CA WARNING:” [or]**
21 **“CALIFORNIA WARNING:”** Can expose you to lead, a
22 carcinogen and reproductive toxicant. See
23 www.P65Warnings.ca.gov/food.

24 **OR**

25 **SHORT FORM ON**
26 **A PRODUCT**
27 **MANUFACTURED/**
28 **LABELED PRIOR**
TO 1/1/28,
REGARDLESS OF
DATE OF SALE

4) WARNING: Cancer and Reproductive Harm –
www.P65Warnings.ca.gov/food.

Pursuant to Section 25607.1, where the warning is provided on the food product label, it must be set off from other surrounding information and enclosed in a box. Where a specific food product sign, label, placard, or shelf tag is used to provide a warning, it must be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. In no case shall a warning statement appear in

1 a type size smaller than 6-point type. Where a sign, labeling, or label as defined in Section 25600.1 is
2 used to provide a warning that includes consumer information about a product in a language other than
3 English, the warning must also be provided in that language in addition to English.

4 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
5 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must
6 be provided via of the following methods: (1) A warning on the product display page; (2) A clearly
7 marked hyperlink using the word “WARNING” or the words “CA WARNING” or “CALIFORNIA
8 WARNING” on the product display page that links to the warning; or (3) An otherwise prominently
9 displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided
10 using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website
11 may use the same content. For purposes of this section, a warning is not prominently displayed if the
12 purchaser must search for it in the general content of the website. For internet purchases made prior to
13 1/1/28, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or
14 displaying the new warning online until 60 calendar days after the retailer receives a warning or a written
15 notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section
16 25603(c) with content compliant with Section 25603(b). These requirements extend to any websites
17 under the exclusive control of Seapoint where Covered Products are sold into California. In addition,
18 Seapoint shall instruct any third-party website to which it directly sells its Covered Products to include
19 the same online warning, as set forth above, as a condition of selling the Covered Products in California.

20 **2.3 Sell-Through Period**

21 Notwithstanding anything else in this Consent Judgment, Covered Products that are
22 manufactured, packaged, or put into commerce on or before the date this Agreement is executed shall
23 be subject to the release of liability pursuant to this Consent Judgment, without regard to when such
24 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
25 of Seapoint, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
26 manufactured, packaged, or put into commerce between the date this Agreement is executed and the
27 Effective Date.
28

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 Seapoint shall pay fifty-five thousand dollars (\$55,000.00) in settlement and total satisfaction
4 of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes
5 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
6 section 25249.7(b) and attorneys' fees and costs in the amount of fifty thousand dollars (\$50,000.00)
7 pursuant to Code of Civil Procedure section 1021.5.

8 **3.2 Civil Penalty**

9 The portion of the settlement attributable to civil penalties shall be allocated according to Health
10 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
11 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
12 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
13 (\$5,000.00) in civil penalties shall be paid as follows:

- 14 • One payment of \$3,750.00 to OEHHA, due 14 (fourteen) days after the Effective date.
- 15 • One payment of \$1,250.00 to EHA, due 14 (fourteen) days after the Effective date.

16 All payments owed to EHA shall be delivered to the following address:

17
18 Isaac Fayman
19 Environmental Health Advocates
20 225 Broadway, Suite 2100
21 San Diego, CA 92101

22 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
23 (Memo Line "Prop 65 Penalties") at the following addresses:

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-4010

1 For Federal Express 2-Day Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

7 Seapoint agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
8 simultaneous with its penalty payment to EHA.

9 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
10 Relevant information is set out below:

- 11 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 12 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

13 All payments referenced in this section shall be paid within fourteen (14) days of the Effective date.

14 **3.3 Attorney's Fees and Costs**

15 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
16 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
17 limited to investigating potential violations, bringing this matter to Seapoint's attention, as well as
18 litigating and negotiating a settlement in the public interest.

19 Seapoint shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
20 counsel by physical check or by electronic means, including wire transfers, at Seapoint's discretion, as
21 follows: fifty thousand dollars (\$50,000.00) in Attorney's Fees and Costs shall be paid as follows:

- 22 • One payment of \$50,000.00, due fourteen (14) days after the Effective date.

23 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
24 entity is:

25 Noam Glick
26 Entorno Law, LLP
27 225 Broadway, Suite 1900
28 San Diego, CA 92101

1 **4. CLAIMS COVERED AND RELEASE**

2 **4.1 EHA’s Public Release of Proposition 65 Claims**

3 Plaintiff, acting on its own behalf and in the public interest, releases Seapoint, and its parents,
4 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
5 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
6 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
7 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
8 (including but not limited to Smart & Final Stores LLC), and marketplaces franchisees, franchisors,
9 cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities’ owners,
10 directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives,
11 predecessors, successors, and assigns (collectively referred to as the “Releasees”) from all claims for
12 violations of Proposition 65 up through the Effective Date based on exposure to lead from Covered
13 Products as set forth in the Notice(s). Compliance with the terms of this Consent Judgment constitutes
14 compliance with Proposition 65 with respect to exposures to lead from Covered Products as set forth
15 in the Notice(s). This Consent Judgment is a full, final, and binding resolution of all claims under
16 Proposition 65 that were or could have been asserted against Seapoint and/or Releasees for failure to
17 comply with Proposition 65 for alleged exposure to lead from Covered Products. This release does not
18 extend to any third-party retailers selling the product on a website who, after receiving instruction from
19 Seapoint to include a warning as set forth above in section 2.2, do not include such a warning.

20 **4.2 EHA’s Individual Release of Claims**

21 EHA, in its individual capacity, also provides a release to Seapoint and/or Releasees, which
22 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
23 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every
24 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
25 alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
26 by Seapoint before the Effective Date.

27 **4.3 Seapoint’s Release of EHA**

28 Seapoint on its own behalf, and on behalf of Releasees as well as its past and current agents,

1 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
2 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
3 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
4 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

5 **4.4 No Other Known Claims or Violations**

6 EHA and EHA’s counsel affirm that they are not presently aware of any actual or alleged
7 violations of Proposition 65 by Seapoint or for which Seapoint bears legal responsibility other than
8 those that are fully resolved by this Consent Judgment.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved by the Court and shall be null and
11 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
12 by such additional time as the Parties may agree to in writing.

13 **6. SEVERABILITY**

14 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held
15 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of California as
18 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
19 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
20 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
21 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
22 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65
23 is determined to be preempted by federal law or a burden on First Amendment rights with respect to
24 lead in Covered Products or Covered Products substantially similar to Covered Products, then Seapoint
25 may seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any
26 Covered Products are so affected by modifying the agreement via the mechanisms set forth in Section
27 12.
28

1 **8. ENFORCEMENT**

2 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
3 to its reasonable attorneys' fees and costs.

4 **9. NOTICE**

5 Unless otherwise specified herein, all correspondence and notice required by this Consent
6 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
7 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
8 the following addresses:

9 If to Seapoint:

10 Damon Pitt
11 Venable LLP
12 2049 Century Park East,, Suite 2300
Los Angeles, CA 90067
dmpitt@venable.com

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@entornolaw.com

13 Any Party may, from time to time, specify in writing to the other, a change of address to which
14 notices and other communications shall be sent.

15 **10. COUNTERPARTS; DIGITAL SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
18 same document.

19 **11. POST EXECUTION ACTIVITIES**

20 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
21 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
22 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
23 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
24 employ their reasonable best efforts, including those of their counsel, to support the entry of this
25 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
26 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,
27 responding to any objection that any third-party may make, and appearing at the hearing before the
28 Court if so requested.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
3 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
4 Party, and the entry of a modified consent judgment thereon by the Court.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

8 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

9 If a dispute arises with respect to either Party's compliance with the terms of this Consent
10 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
11 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
12 in the absence of such a good faith attempt to resolve the dispute beforehand.

13 **15. ENTIRE AGREEMENT**

14 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
15 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
16 commitments, and understandings related hereto. No representations, oral or otherwise, express or
17 implied, other than those contained herein have been made by any Party. No other agreements, oral or
18 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

19 **AGREED TO:**

AGREED TO:

20 2/21/2025

21 Date: _____

21 Date: 2-19-25

22 By: [Signature]

22 By: [Signature]

23 ENVIRONMENTAL HEALTH
24 ADVOCATES, INC.

23 SEAPOINT FARMS, LLC

IT IS SO ORDERED.

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Date: _____

JUDGE OF THE SUPERIOR COURT